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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/176,634	10/22/1998	MORDECHAI TURI	JWB-98-9-P	2106

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EXAMINER

KIDWELL, MICHELE M

ART UNIT	PAPER NUMBER
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3761

DATE MAILED: 08/13/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/176,634

Applicant(s)

TURI ET AL. *cn*

Examiner

Michele Kidwell

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 8/5/03.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 28-38 is/are pending in the application.
- 4a) Of the above claim(s) 28-35, 37 and 38 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 36 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) *Additional art cited shows state of the art.*
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413) Paper No(s) \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### *Specification*

The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: the applicant claims that a first generally concave elasticized barrier layer. However, there is no support for a concave barrier layer in the specification.

### *Claim Objections*

Claim 36 is objected to because of the following informalities: the letter s should be added to the word "side" in line 18 of the claim. Appropriate correction is required.

### *Claim Rejections - 35 USC § 112*

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 36 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The applicant claims that the first barrier layer is generally concave. It is unclear how the first barrier layer is considered concave while the second barrier layer is considered convex. If, according to the specification, the layers are not formed by any <sup>✓</sup> ~~any~~ 6/4/17 differently from each other with the exception that the layers are joined in different

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areas. It is unclear what makes one layer convex while the other is concave.

Clarification and/or correction are required.

Additionally, claim 36 states that the absorbent layer is defined by two opposed longitudinal sides among other things. Following this, the claim states that the two arched-shaped barrier layers are attached to the longitudinal sides. How can the barrier layers be attached to the absorbent layer that is disposed between the topsheet and the backsheet and also form a barrier layer on the topsheet? It would seem that the article itself would have to be defined by the longitudinal sides thereby allowing the barrier layer to be attached at the claimed locations and still allow the barrier to be formed on the topsheet. Correction and/or clarification are required.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claim 36 is rejected under 35 U.S.C. 102(e) as being anticipated by Suzuki et al. (US 6,494,872).

With reference to claim 36, Suzuki et al. disclose an integral, disposable, elasticized absorbent article having a longitudinal axis and a lateral axis comprising a topsheet, a backsheet (col. 5, lines 64 – 67), a waist portion consisting of a front waist portion, a back waist portion, a crotch portion and a pair of spaced apart leg openings

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(figure 1), an absorbent layer having a longitudinal axis and a horizontal axis disposed between the topsheet and the backsheet (col. 5, lines 64 – 67), means for fastening the article around the waist of the wearer, and two arched shaped barrier layers (11) comprising a first barrier layer having one end attached between the middle portion and the distal end of one of said longitudinal sides and a second end attached between the middle portion and the distal end of the other one of said longitudinal sides thereby forming a first retaining enclosure between the first barrier layer and the topsheet and a second elasticized barrier layer having one end attached between the middle portion and the proximal end of one of said longitudinal sides and the other end attached between the middle portion and distal end of the other one of said longitudinal sides thereby forming a second retaining enclosure between the second barrier layer and the topsheet, and wherein the first and second arched-shaped barrier layers intersect each other to form a double barrier layer on the topsheet of the article as set forth in col. 4, lines 6 – 17 and figure 3d.

The article of Suzuki et al. is formed on an assembly as shown in figure 3d. The article is secured over an absorbent body and as shown in figure 3d the longitudinal ends, the area just outside of the aperture designated as "4", depicts the first and second sheets being attached to the article as claimed and overlapping.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michèle Kidwell whose telephone number is 703-305-2941. The examiner can normally be reached on Monday - Friday, 7:30am - 4:00pm.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Weilun Lo can be reached on 703-308-1957. The fax phone numbers for the organization where this application or proceeding is assigned are 703-305-3590 for regular communications and 703-305-3590 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0858.

*Michele Kidwell*  
Michele Kidwell  
August 8, 2003

  
**KIM M. LEWIS**  
**PRIMARY EXAMINER**  
*AU 3761*